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No. 82-1367

IN THE

Supreme Court of the United States

OCTOBER TERM 1982

ROADWAY EXPRESS, INC.,
Petitioner,

V.

LAWRENCE G. WARREN,
Respondent.

ON WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF GEORGIA

BRIEF OF RESPONDENT

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QUESTIONS PRESENTED

1. Whether the Georgia State Board of Workers' Compensation gave constitutionally required full faith and credit to Tennessee law in awarding Respondent supplemental workers' compensation benefits under Georgia law after Respondent previously received workers' compensation benefits under Tennessee law.
2. Whether Georgia had sufficient contact with Respondent's employment by Petitioner for the Georgia State Board of Workers' Compensation to satisfy the requirements of due process in awarding Respondent supplemental workers' compensation benefits under Georgia law.

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BRIEF OF RESPONDENT

STATEMENT OF THE CASE

I.

PROCEEDINGS BELOW

On October 20, 1978, Lawrence G. Warren (hereinafter referred to as "Respondent") was injured in an accident in Indiana while driving a truck for Roadway Express, Inc. (hereinafter referred to as "Petitioner"). (P-A-17a) He received workers' compensation benefits in Tennessee until October 12, 1979. (P-A-18a) Respondent then filed a claim for benefits under the Georgia Workers' Compensation Act. (J-A-3-4) After a hearing, the Administrative Law Judge issued an award on August 6, 1980, and found that Georgia's State Board of Workers' Compensation had jurisdiction over the claim and found further that Respondent had been disabled continuously

from the date of the accident; the award directed the Petitioner to pay Respondent weekly disability benefits and medical benefits under Georgia law and allowed Petitioner an appropriate credit for all amounts previously paid pursuant to Tennessee law. (P-A-16a-23a).

Petitioner appealed this award to the Chairman and two Directors of the State Board of Workers' Compensation who affirmed the original award on January 8, 1981. (J-A-52-53) Petitioner then appealed to the Superior Court of Fulton County, Georgia which affirmed the decision of the State Board of Workers' Compensation in an Order dated December 1, 1981. (J-A-54-55; P-A-5a).

On December 31, 1981, Petitioner filed its Application for Appellate Review in the Supreme Court of Georgia. In an Order dated January 7, 1982, the Supreme Court of Georgia transferred this Application to the Court of Appeals of Georgia. (P-A-4a) The Court of Appeals granted Petitioner's Application for Appellate Review in an Order dated January 26, 1982. (P-A-3a) Pursuant to this Order, Petitioner filed its Notice of Appeal to the Court of Appeals on January 29, 1982.

On September 16, 1982, the Court of Appeals of Georgia affirmed the previous awards and orders in an opinion entitled *Roadway Express, Inc. v. Warren*, 163 Ga. App. 759, 295 S.E.2d 743 (1982). (P-A-8a-15a) Petitioner's Motion for Rehearing was denied on October 7, 1982; its Application for Certiorari to the Supreme Court of Georgia was denied on November 16, 1982. (P-A-1a) This Court then granted certiorari.

II.

STATEMENT OF FACTS

Respondent filled out a written application for employ-

ment at Petitioner's office in DeKalb County, Georgia in March 1963, and was hired at that time as an over-the-road truck driver operating out of Atlanta, Georgia. (J-A-25) He drove to and through various states in the eastern part of the United States until he was injured in 1967. (J-A-10-11) Respondent drew workers' compensation benefits from Petitioner from 1967 through 1971. (J-A-11; R-59)

In 1969, during this four year period of disability when Respondent was not actively working for Petitioner, Petitioner changed its method of operation from two drivers per truck to one. (J-11; R-60) Prior to instituting this change of operations, Petitioner had 343 truck drivers operating out of Atlanta, Georgia and Respondent was number 320 on the seniority list. He was offered a choice of jobs at the time of this change of operations *if* his seniority would permit him to be accepted at such alternate job locations. If Respondent had made choices which were cut off by the seniority system, he would have been placed in a lay-off status. (J-A-11-12; R-63-64) Accordingly, because Respondent was worried that he might be too low in seniority in Atlanta whenever he might be able to return to work, and was concerned that he might not be on the payroll at that time, he listed Nashville, Tennessee as his first choice. (R-86) Then, on August 16, 1969, Petitioner executed an "Employment Status Form" which mentioned nothing about "reemployment" but placed the words "change of operations" after the words "justification . . . for transfer." (J-A-25; R-122-124)[1]

Respondent remained in Atlanta until 1971 when his disability from his 1967 accident ended. (J-A-26; J-A-50)

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[1] The printer of the Joint Appendix failed to include all relevant portions of this form; the entire form is located at R-122-124.

Petitioner refers to this return to work exclusively as "reemployment"; such terminology ignores the facts of the return to work as well as Petitioner's own "Employment Status Form" of March 10, 1971. That form makes reference to a "return to work from extended sick leave." It gives the seniority date as March 23, 1963. Furthermore, Petitioner checked the block labeled "reinstatement" and not the blocks labeled "new hire" or "rehire." (J-A-50-51; R-178) [2]

When Petitioner returned to work at the Nashville terminal in 1971, his initial truck driving was from Nashville to Atlanta, Georgia. (J-A-13) Then, for four years, his primary route was from Nashville to another city in Tennessee. (J-A-14) Claimant sustained the subject injury in October 1978 in Indiana on his regular run from Nashville to Chicago. (J-A-15; P-A-18a)

Soon after the accident, Respondent signed workers' compensation forms providing for payment of benefits under Tennessee law. The circumstances surrounding the signing of these forms are described in the following testimony of Respondent:

> A. I was required to sign a form before they gave me a workmans' compensation check.
>
> * * *
>
> Q. And you signed that to get benefits under the Tennessee Act; is that correct?
>
> A. I signed it for benefits under workmans' compensation. I wasn't aware of Tennessee, Georgia or any other—

(J-A-8-10; R-116).

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[2] *See* note 1, *supra;* the relevant page of this form is located at R-178.

Petitioner unilaterally suspended benefits on October 12, 1979. (J-A-30-33) Following the suspension of benefits,[3] Respondent initiated the Georgia workers' compensation claim which is the subject of the case at bar. At the hearing before the Georgia Administrative Law Judge, Petitioner stipulated that it was subject to the Georgia Workers' Compensation Act and was a qualified self-insurer under the Georgia Workers' Compensation Act. (P-A-162-172) In addition, Petitioner's only witness at that hearing was its supervisor of workers' compensation, State of Georgia; this witness had been stationed in Atlanta from 1963 until the date of the hearing. (R-110-111)

SUMMARY OF ARGUMENT

The exercise of jurisdiction by Georgia's State Board of Workers' Compensation over Respondent's workers' compensation claim did not violate the Full Faith and Credit Clause of the Constitution. The plurality in *Thomas v. Washington Gas Light Co.*, 448 U.S. 261 (1980) held that, if a state has the power to issue an award "in the first instance," full faith and credit does not preclude that state from issuing a supplemental award. Under this "due process" standard, neither Tennessee's exclusive remedy statute nor its alleged "proceedings" could bar Georgia's supplemental award. The essential differences between the various state workers' compensation schemes and other adversary proceedings compel this result.

The concurring opinion in *Thomas* followed *Industrial Comm'n of Wisconsin v. McCartin*, 330 U.S. 622 (1947)

[3] There never has been a Tennessee adjudication that Respondent's disability ended; to the contrary, the Georgia award found that he had been disabled continuously from the date of the accident, October 20, 1978, through the date of the hearing, March 11, 1980. (P-A-22a)

which held that only "unmistakable language" of a state's laws or judicial opinions barring supplemental awards in other states gives rise to a full faith and credit defense to such supplemental awards. Neither Tennessee's statutes nor its judicial opinions contain such "unmistakable language." Accordingly, regardless of which of these two full faith and credit analyses is used, Georgia gave full faith and credit both to Tennessee's laws and its proceedings.

The Due Process Clause of the Constitution does not prohibit Georgia's State Board of Workers' Compensation from exercising jurisdiction over Respondent's claim. Petitioner and Respondent entered into their employment contract in Georgia; Respondent then worked in Georgia for several years; Petitioner has conducted business in Georgia and has been a self-insurer for workers' compensation there at all relevant times. This Georgia contract, Petitioner's continued presence in Georgia and its familiarity with the Georgia's Workers' Compensation Act are sufficient contacts to satisfy the due process requirements of fundamental fairness and predictability.

ARGUMENT AND CITATION OF AUTHORITY

Relying upon the Georgia Workers' Compensation Act's section dealing with out-of-state accidents,[4] the Georgia State Board of Workers' Compensation and its courts have awarded the Respondent supplemental workers' compensation benefits and have given the Petitioner

[4] O.C.G.A. § 34-9-242 (1981) [GA. CODE ANN. § 114-411 (1933)] permits compensation for extraterritorial accidents if there was a Georgia contract of employment and if either the employer's place of business or the employee's residence is in Georgia. This statute is reproduced on p. 2a of Brief of Petitioner.

credit for all sums previously paid. Neither the proceedings in Tennessee nor that state's statutes require the use of the Full Faith and Credit Clause to bar Georgia's exercise of its jurisdiction over Respondent's claim against Petitioner. In addition, Georgia has significant contacts with Petitioner, Respondent and their employment relationship; these contacts satisfy the requirement of affording Petitioner due process of law.

I.

THE FULL FAITH AND CREDIT CLAUSE DOES NOT BAR A SUPPLEMENTAL WORKERS' COMPENSATION AWARD IN GEORGIA AFTER PAYMENT OF BENEFITS UNDER THE TENNESSEE ACT

This Court's latest case dealing with the application of the Full Faith and Credit Clause of the United States Constitution [5] to supplemental workers' compensation awards does not afford a majority analysis of the issues at bar; nevertheless, whether one chooses to follow the reasoning of the plurality in *Thomas v. Washington Gas Light Co.*, 448 U.S. 261 (1980) or to utilize the rationale of the three concurring Justices, Georgia has given full faith and credit to Tennessee's proceedings and statutes.[6]

A. Neither the Tennessee Proceedings Nor the Tennessee Statute Can Prevent Recovery of Supplemental Benefits Under the Georgia Workers' Compensation Act.

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[5] U.S. Const. Art. IV, § 1.

[6] Petitioner offers separate arguments concerning full faith and credit as applied to judicial proceedings on the one hand and to statutes on the other hand. As argued herein, this distinction should not apply in the area of workers' compensation law.

The plurality opinion in *Thomas* is unequivocal:

> We therefore would hold that a State has no legitimate interest within the context of our federal system in preventing another State from granting a supplemental compensation award when the second State would have had the power to apply its workmen's compensation law in the first instance. The Full Faith and Credit Clause should not be construed to prevent successive workers' compensation awards.

448 U.S. at 286. Under this holding, whether one discusses the effects of the Tennessee proceedings or the Tennessee statute, the Full Faith and Credit Clause did not bar the Georgia State Board of Workers' Compensation from issuing a supplemental award in favor of Respondent. Only a lack of the power to apply its Workers' Compensation Act "in the first instance" could have precluded Georgia from issuing that award. Thus, the sole question is whether Georgia had the power to apply its own act. Respondent strongly contends that it did.

The *only* contract of employment between Petitioner and Respondent was entered into in Georgia. Respondent lived and worked in Georgia from the time of that contract until Petitioner's changes in operations forced Respondent to choose to transfer to Tennessee. He continued to drive to Georgia for a period of time. Even after he ceased driving his truck in Georgia, Petitioner continued its major operations in that state. At the time of the workers' compensation hearing in the case at bar, Petitioner was self-insured for workers' compensation in Georgia and its manager of workers' compensation for Georgia operations testified at the hearing. As discussed *infra*,[7] these facts are sufficient to vest Georgia with the

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[7] Section II, pp. 18-22, *infra*.

power to apply its Workers' Compensation Act to Respondent's 1978 accident.

To Respondent, it appears that this "fresh examination of the full faith and credit issue" by the *Thomas* plurality sets forth a threshold interest analysis, *i.e.*, a traditional due process analysis. Such an approach is consistent with the practical effect of this Court's treatment of both workers' compensation "exclusive remedy" statutes since *Alaska Packers Ass'n v. Industrial Accident Comm'n*, 294 U.S. 532 (1935) and workers' compensation proceedings since *Industrial Comm'n of Wisconsin v. McCartin*, 330 U.S. 622 (1947). The interest analyses which have resulted in holdings that exclusive remedy statutes, in and of themselves, do not bar proceedings in other states were not criticized in either the concurring or dissenting opinions in *Thomas*.[5] Nevertheless, Respondent must recognize the existence of criticism of both *McCartin* and the plurality's analysis insofar as they deal with prior workers' compensation awards or judgments; however, Respondent asserts that the effects of *McCartin* and the plurality's analysis are consistent with the nature of worker's compensation proceedings.

In *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430 (1943), five Justices held that full faith and credit barred a supplemental Louisiana award because of the prior issuance

[5] *Alaska Packers* (contract of hire in California; employer, job and accident in Alaska; California compensation allowed); *Pacific Employers Ins. Co. v. Industrial Accident Comm'n*, 306 U.S. 493 (1939) (Massachusetts employee and employer; accident in California; California compensation allowed); *Carroll v. Lanza*, 349 U.S. 408 (1955) (Missouri employee, employer and contract of hire; work and accident in Arkansas; Arkansas tort action allowed). These cases have severely limited and perhaps "buried" *Bradford Electric Co. v. Clapper*, 286 U.S. 145 (1932) (Vermont employer, employee and contract of hire; death in New Hampshire; Vermont statute bars suit in New Hampshire).

of a Texas award. Respondent will not recite here all of the arguments against that result. Those arguments have been urged strongly by the *Thomas* plurality, the dissenting opinions of Mr. Justice Douglas and Mr. Justice Black in *Magnolia*, and in numerous articles following on the heels of *Magnolia*. In summary, the criticisms of applying the bar of full faith and credit to supplemental worker's compensation awards have focused on the disparate positions of employees and employers and the nature of worker's compensation proceedings.[9] The different resources of Larry Warren and Roadway Express, Inc. are obvious but may or may not be proper considerations in this analysis; however, Respondent strongly urges that the very nature of worker's compensation proceedings distinguishes them from the type of proceedings to which full faith and credit should apply. In the ordinary case, a court or other quasi-judicial body will apply the forum's choice of law rules after the parties have had a chance to argue their positions.[10] The situation in the case at bar could not be more different.

Respondent was home in Tennessee and had not yet received any worker's compensation benefits.

> . . . and they withheld the checks until — they wouldn't bring it to my house, they wouldn't mail it. I had to get out of bed and have my son drive me down to the terminal, and he went up and got

[9] *See* Cheatham, *Res Judicata and the Full Faith and Credit Clause: Magnolia Petroleum Co. v. Hunt*, 44 Colum. L. Rev. 330, 343-346 (1944); Wolkin, *Workmens' Compensation Award—Commonplace or Anomaly in Full Faith and Credit Pattern?*, 92 U. Pa. L. Rev. 401, 405-411 (1944); and other commentaries noted in *Thomas*, 448 U.S. at 269 n.11.

[10] *See* Reese and Johnson, *The Scope of Full Faith and Credit to Judgments*, 49 Colum. L. Rev. 153, 176-177 (1949); Respondent believes that this article presents an excellent structural analysis of the issue of giving full faith and credit to judgments.

> it [the subject agreement] and brought it downstairs and signed it and returned it.
>
> * * *
>
> I signed it for benefits under workmen's compensation. I wasn't aware of Tennessee, Georgia, or any other—

(J-A-18) This is the entire "proceeding" to which Petitioner urges this Court to give full faith and credit! Even if Respondent could have had a hearing in Tennessee (assuming he knew that he had a right to one), and even if he had requested Georgia benefits, the Tennessee court would not have entertained that request.[11]

Petitioner offers no argument against the rationale of the *Thomas* plurality. Petitioner merely argues that Georgia is ignoring the administrative and judicial proceedings of a sister state allegedly having a greater interest to the subject matter. Georgia has done no such thing! The Georgia award gives Petitioner credit for payments made under Tennessee law. The Tennessee "proceedings," if they can be so designated, contain no findings or conclusions ignored by the Georgia award. So long as Georgia meets a threshold level of interest, honors factual findings, and credits payments made, Tennessee has no interest in prohibiting Georgia from issuing a supplemental award and the Full Faith and Credit Clause has not been violated.

B. Neither the Tennessee Statute Nor Tennessee's Case Law Contain Unmistakable Language Required to Invoke the Full Faith and Credit Clause.

The main thrust of Petitioner's argument is that Respondent made an irrevocable election to proceed under

[11] *Ray v. Aetna Casualty & Surety Co.*, 517 S.W.2d 194 (Tenn. 1974); *Davis v. Swift & Co.*, 133 S.W.2d 483 (Tenn. 1939).

the Tennessee Workers' Compensation Act. Assuming *arguendo* that Tennessee has an irrevocable election doctrine and that Petitioner's receipt of Tennessee benefits fits within that doctrine, the principles set forth in *Industrial Comm'n of Wisconsin v. McCartin*, *supra*, permit the issuance of Georgia's supplemental award to Respondent.

In *McCartin*, this Court dealt with an Illinois statute, the relevant parts of which read as follows:

> No common law or statutory right to recover damages for injury or death sustained by an employe while engaged in the line of his duty as such employe, other than the compensation herein provided, shall be available to any employe who is covered by the provisions of this Act . . . .

330 U.S. at 627. This Court then found that neither this statute nor the decisions interpreting it "indicate that it is completely exclusive." This Court continued:

> And in light of the rule that workmen's compensation laws are to be liberally construed in furtherance of the purpose for which they were enacted, [citations omitted] we should not readily interpret such a statute so as to cut off an employee's rights to sue under other legislation passed for his benefit. Only some unmistakable language by a state legislature or judiciary would warrant our accepting such a construction.

Id. at 628.

In *Thomas*, Virginia's "exclusive remedy" statute stated that the rights and remedies granted to an employee pursuant to that statute "shall exclude all other rights and remedies of such employee . . . at common law or otherwise on account of such injury, loss of service or death." 448 U.S. at 265 n.4. Three concurring Justices found that this language was not "unmistakable" concerning the

extraterritorial effect of the statute and applied *McCartin* to support the supplemental award to the employee. Both the plurality and the dissent in *Thomas* implicitly recognized that *McCartin* was technically applicable in light of the language of the Virginia act.

Tennessee's exclusive remedy statute reads as follows:

> The rights and remedies herein granted to an employee subject to the Workmen's Compensation Law on account of personal injury or death by accident . . . shall exclude all other rights and remedies of such employee, his personal representative, dependents, or next of kin, at common law or otherwise, on account of such injury or death.

TENN. CODE ANN. § 50-908 (1977) [now codified at TENN. CODE ANN. § 50-6-108 (1983)]. Clearly, this statute does not have the "unmistakable language" required under *McCartin*.

Contrary to Petitioner's assertions, Tennessee case law does not have the required language for at least two reasons. First, in *True v. Amerail Corp.*, 584 S.W.2d 794 (Tenn. 1979) and *Tidwell v. Chattanooga Boiler & Tank Co.*, 163 Tenn. 420, 43 S.W.2d 221 (1931) the Tennessee Supreme Court was dealing with situations where the employee had received benefits in another state and had then applied for benefits in Tennessee. Thus, no unmistakable statement concerning the extraterritorial effect of Tennessee law was made. Petitioner stresses the fact that these cases could not have expressed an opinion on the extraterritorial effect. Respondent fully agrees, but asserts that this fact is immaterial. It is presumptuous to assume that, if the Tennessee Supreme Court somehow had been presented with the question of the extraterritorial effect of its law, it would have instructed the courts of Georgia or any other state that they could not

apply their own laws. Only a direct statement concerning extraterritorial effect should be considered to meet the "unmistakable language" requirement of *McCartin*.

Nevertheless, even if one or more members of this Court consider the language of the Tennessee statute as interpreted by the Tennessee Supreme Court to contain "unmistakable language," an examination of the relevant Tennessee cases shows an analysis based *solely* upon contracts of employment entered into in Tennessee. It is apparent from the *Tidwell* decision that the contract of employment was entered into in Tennessee. The employer's place of business was in Chattanooga, Tennessee and "[h]is contract with defendant contemplated that he would be sent out of the state when occasion required on jobs like this." 43 S.W.2d at 222. The Tennessee Supreme Court used a strict contract analysis, incorporating the provisions of the Tennessee Workers' Compensation Act into the employment contract. The court noted that "[b]y force of Section 19 the contract of employment covered this accident, which occurred in the state of Ohio." Section 19 of Tennessee's Compensation Act at that time provided coverage under Tennessee law for extraterritorial accidents only "if the contract of employment was made in this State, unless otherwise expressly provided by said contract." *Id.* at 222-223.

This employment contract rationale in *Tidwell*, followed in subsequent Tennessee cases,[12] demonstrates that

[12] In *True*, the contract of employment was made in Washington County, Tennessee, 584 S.W.2d at 795. In *Hale v. Commercial Union Assurance Co.*, 637 S.W.2d 865 (Tenn. 1982), another case dealing with Tennessee's alleged irrevocable election doctrine, the contract of employment was entered into in Tennessee. In *Thomas v. Transport Insurance Co.*, 532 S.W.2d 263 (Tenn. 1976), another case dealing with this subject, it is not stated in which state the employment contract was executed. Nevertheless, that case acknowledged *Tid-*

Tennessee's concern with supplemental workers' compensation awards is grounded upon that state's interpretation of "renunciation or disaffirmance" of a *Tennessee contract*. 43 S.W.2d at 223. Thus, if Tennessee has a true irrevocable election doctrine and if Tennessee has expressed that doctrine in "unmistakable language," that doctrine and the "unmistakable language" is limited to situations where the contract of employment was entered into in Tennessee. In the case at bar, the employment contract was entered into in the state of Georgia and, accordingly, Tennessee's alleged irrevocable election doctrine is plainly not applicable.[13]

Furthermore, if one assumes that Tennessee's cases contain the "unmistakable language," that language includes the requirement that the employee "has taken affirmative action to seek a recovery under the laws of [Tennessee], or has voluntarily, deliberately and with full knowledge of his options, accepted benefits under Tennessee law." *Thomas v. Transport Insurance Co.*, 532 S.W.2d 203 (Tenn. 1976). In *True v. Amerail Corp., supra*, the employee signed an agreement to accept Virginia benefits and an award approving that agreement was issued. The Tennessee Supreme Court found a binding election because "we cannot presume from a silent record that plaintiff did not have full knowledge of all his

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well as the source of the "irrevocable election doctrine" and it must be assumed that it was a Tennessee contract.

[13] Petitioner persists in belittling the finding of Georgia's State Board of Workers' Compensation that there was only one contract of employment and that such contract was made in Georgia. Brief of Petitioner, p. 31 n.23 and accompanying text. Petitioner continues to ignore its own forms showing a "transfer," "reinstatement," and "return to work from extended sick leave" in 1971 as opposed to "new hire" or "rehire." *See* text accompanying nn.1 and 2 *supra*.

options." 584 S.W.2d at 797. Admittedly, the Georgia administrative law judge found that Respondent "entered into an agreement whereby [he] elected to come under the Workers' Compensation Laws of Tennessee" (P-A-18a). However, this was not a finding that he had "full knowledge of his options," and, accordingly, this case could not fit within Tennessee's allegedly "unmistakable language."

Obviously, the discussion contained in this part of this Brief relies at least in part on the continued viability of *McCartin*. Petitioner, by completely ignoring *McCartin* in the section of its brief dealing with the giving of full faith and credit to statutes, presumes that case's demise. Despite this Court's criticism of *McCartin*, seven Justices in *Thomas* either expanded on the result of that case or recognized its continued viability. Whether or not the plurality's threshold analysis is desirable, it recognizes the state of the law following *McCartin*. Because of the nature of workers' compensation proceedings and the language of apparently all but one of the state exclusive remedy statutes, *Magnolia* was ignored continually and it was virtually impossible to prevent supplemental awards.[14] The three concurring Justices in *Thomas* recognized this and held that *McCartin* was controlling "since the Virginia Workman's Compensation Act lacks the 'unambiguous language' which *McCartin* requires . . . ." 448 U.S. at 289-290.

In order for the Petitioner to argue as it has, it is silently requesting that *McCartin*, a unanimous decision

[14] *See* NEVADA REV. STAT. § 616.525 (1979) discussed in *Thomas*, 448 U.S. at 271 n.21, as apparently the only statute to exclude remedies in other states. *See also Thomas*, 448 U.S. at 275 n.22 and 4 A. Larson, *Workmen's Compensation Law* § 85.40 n.42 (1983) for citations to the many cases permitting supplemental workers' compensation awards.

of this Court, be overruled and that *Magnolia*, a five-to-four decision, control all efforts at supplemental workers' compensation awards. As argued in the previous section of this Brief, whether or not *McCartin's* rationale is proper, its result conforms to the reality of the nature of worker's compensation proceedings. Furthermore, it must be observed that a return to the rigid rule of *Magnolia* will have the effect of declaring unconstitutional the laws and judicial doctrines of the many states whose statutes or opinions authorize the granting of supplemental awards.[15]

Respondent acknowledges that each of the opinions in *Thomas* had at least some criticism of *McCartin*. Perhaps that criticism is warranted insofar as *McCartin* (and *Magnolia* before it) attempted to analyze the problem of supplemental workers' compensation awards under a full faith and credit analysis. Cannot it be stated quite simply that a state gives full faith and credit to the prior workers' compensation awards of another state when it gives the employer or insurer credit for payments previously made? Is not the Due Process Clause of our Constitution sufficient protection against parochial treatment by one state of another state's workers' compensation laws or rulings (and also against "forum shopping")? As stated by Mr. Justice Black in 1943,

> For more than half a century the power of the states to regulate their domestic economic affairs has been narrowly restricted by judicial interpretation of the federal Constitution. The chief weapon in the arsenal of restriction, only recently falling into disrepute because of overuse, is the Due Process Clause. The Full Faith and Credit Clause, used today to serve the same purposes, is no better suited to control the

[15] *See, e.g.*, O.C.G.A. § 34-9-242 (1981) [GA. CODE ANN. § 114-411]; VA. CODE § 65.1-61 (1980).

freedom of the states.

320 U.S. at 462.[16]

If full faith and credit is to continue as the initial point in reviewing the validity of supplemental worker's compensation awards, Respondent contends that *McCartin* should hold its place as the authoritative precedent on the narrow issue of supplemental workers' compensation awards; accordingly, if a state has not stated expressly that its exclusive remedy statute applies to supplemental remedies sought in other states, the only remaining question is whether or not the application of the law of the second state satisfies the requirements of due process.

II.

GEORGIA HAD SUFFICIENT CONTACT WITH RESPONDENT'S EMPLOYMENT TO SATISFY DUE PROCESS REQUIREMENTS IN ISSUING THE SUPPLEMENTAL WORKERS' COMPENSATION AWARD

Georgia had significant contact with Respondent's employment, and, therefore, could constitutionally apply its substantive law under the principles set forth in *Alaska Packers Association v. Industrial Accident Commission*, 294 U.S. 532 (1935), and *Allstate Insurance Company v. Hague*, 449 U.S. 302 (1981). Respondent's employment contract, under which he worked for Petitioner at the time of his injury, was entered into in Georgia. After the contract was signed, Respondent worked out of Atlanta for four years. Both at the time of the accident and at

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[16] It has been noted frequently that due process and full faith and credit analyses have been identical in deciding choice-of-law cases. *See, e.g., Allstate Ins. Co. v. Hague*, 449 U.S. 302, 308 n.10 (1981); *id.* at 322 n.6 (J. Stewart, concurring).

the time of the hearing, Petitioner was doing business in Georgia and was a self-insured under the Georgia Workers' Compensation Act.

Contrary to Petitioner's suggestion, Respondent always has worked under his original employment contract. When Respondent was injured in 1967 he was given an extended medical leave. In 1971 he was reactivated to working status and transferred to Nashville. There was never any reemployment as Petitioner suggests.[17] Certainly the application of the Georgia Workers' Compensation Act to a company doing business in Georgia and with respect to an employee who was hired in Georgia, is not arbitrary nor does it deny due process of law. The interest of the state in protecting the rights of workers hired in that state is without question.

Petitioner correctly recites the standard stated by the *Hague* plurality to satisfy due process. In order for the forum state to apply its substantive law in a constitutionally permissible manner, it must have a significant contact or aggregation of contacts. 449 U.S. at 308. The mere fact that Respondent was stationed in Nashville after returning from his medical leave does not lessen the interest of Georgia in protecting that employee. In *Alaska Packers*, this Court affirmed California's application of its workers' compensation act to a non-resident who was hired in California to work in Alaska. The Court stated:

> But where the contract is entered into within the state, even though it is to be performed elsewhere, its terms, its obligations and its sanctions are subject in some measure, to the legislative control of the state. The fact that the contract is to be performed

[17] *See* note 13, *supra*.

> elsewhere does not of itself put these incidents beyond the reach of the power which a state may constitutionally exercise.

294 U.S. at 540-541. Petitioner incorrectly asserts that the inevitable factual distinctions between *Alaska Packers* and the case at bar dictate a different result. While the facts in that case and the case at bar obviously are not identical, the significance given to the employment contract cannot be denied. Furthermore, in *Alaska Packers* the contract was for work exclusively outside of California; in this case, as required by Georgia law,[15] Respondent worked in Georgia for at least four years and Petitioner has had a continued and significant presence in Georgia.

The importance of the continued presence of Respondent in Georgia as a self-insured under the Georgia Workers' Compensation Act cannot be ignored. The plurality in *Hague* stated that "[b]y virtue of its presence, Allstate can hardly claim unfamiliarity with the laws of the host jurisdiction and surprise that the state courts might apply forum law to litigation in which the company is involved." 449 U.S. at 317-18. In his concurring opinion, Mr. Justice Stewart stressed the same presence but more in terms of the reasonable expectations of the parties. 449 U.S. at 326-30. In the case at bar, both parties operated in Georgia under the Georgia contract for at least four years; in addition, Petitioner paid workers' compensation benefits to Respondent in Georgia as a result of the 1967 accident which resulted in his lengthy medical leave and it has continued to operate in Georgia as a self-insured under the Georgia Workers' Compensation Act. (P-A-162-172) Petitioner's familiarity with Georgia law is obvious

[15] O.C.G.A. § 34-9-242 (1981) [GA. CODE ANN. § 114-411 (1933)].

and it cannot disclaim reasonable anticipation that Georgia might issue supplemental workers' compensation awards based on a specific provision of the Georgia Workers' Compensation Act.[19]

Petitioner's argument that Georgia's interest in the claimant's employment ended in 1971 when Respondent's base moved to Nashville is incorrect. When Petitioner entered into a Georgia employment contract with Respondent who then went to work in Georgia, the Respondent was vested with an employee's rights under the Georgia Workers' Compensation Act. Petitioner cannot seriously argue that Georgia does not have a continuing interest in seeing that those rights are maintained. The mere transfer of a Georgia employee out of the state should not be enough to take away Georgia's ability to enforce those rights. Obviously Georgia has a vital interest in monitoring benefits paid to employees hired in Georgia. Employers should not be permitted to take advantage of Georgia law by entering employment contracts in the state and then to escape liability under the Georgia Workers' Compensation Act by the transfer of those employees out of the state.

Petitioner has mistakenly relied on the cases of *Home Insurance Company v. Dick*, 281 U.S. 397 (1930), and *John Hancock Mutual Life Insurance Company v. Yates*,

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[19] O.C.G.A. § 34-9-242 (1981) [GA. CODE ANN. § 114-411 (1933)] specifically covers supplemental awards in its last sentence: "If an employee shall receive compensation or damages under the laws of any other state, nothing contained in this Code section shall be construed so as to permit a total compensation for the same injury greater than is provided for in this chapter." The first parts of that code section put Petitioner on notice that Georgia would award benefits for an accident outside of Georgia if the employment contract was made in Georgia and if Petitioner had a place of business in Georgia.

299 U.S. 178 (1936), for the proposition that the application of Georgia law under O.C.G.A. § 34-9-242 (1981) [GA. CODE ANN. § 114-411 (1933)] was unconstitutional. While it is true that in *Dick* and *Yates* the Court found significant contact did not exist, these cases are not applicable here. As pointed out in *Hague*, *Dick* and *Yates* considered the situation where a foreign state had only an insignificant contact with the parties in the occurrence or transaction. In *Dick* the only contact with the State of Texas was nominal residence. All acts related to the making of the subject policy were done in Mexico, the risk was located in Mexico and no performance in Texas was anticipated. Under those circumstances, this Court found that it was a denial of due process to use Texas law to escape the period of limitations contained in the contract. Similarly, in *Yates* the only contact with Georgia was a post occurrence change of residence; all of the other contacts with the insurance contract sued on were with New York. Under those circumstances, the Court found that due process had been violated by the application of Georgia law. In the instant case, the contract under which Respondent's employment existed was entered into in Georgia, he worked in Georgia for four years, and it was only during his lengthy medical leave that he reluctantly transferred to Nashville, Tennessee. Thus, nothing in the reasoning in either *Dick* or *Yates* suggests that due process would be violated by the Georgia courts' application of the Georgia Workers' Compensation Act in the instant case. Georgia had significant contacts and the requirements of the Due Process Clause have been met.

CONCLUSION

Georgia's State Board of Workers' Compensation gave full faith and credit to the prior Tennessee Workers' Compensation agreement by giving Petitioner credit for past payments; the Full Faith and Credit Clause did not preclude Georgia's supplemental award. In addition, the requirements of the Due Process Clause were satisfied by Georgia's significant contacts with the parties and their employment relationship. For these reasons, Respondent respectfully requests that the decision of the Court of Appeals of Georgia be affirmed.

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